

Attorney Docket: 26274
Serial No.: 10/506,407

REMARKS

Claims 31-35, 40-44, 67-69, 74-79 and 84 are pending in the present application. Claims 36-39, 45-66, 70-73 and 80-83 have been withdrawn as being directed to non-elected subject matter. Claims 31, 67 and 84 have been amended. The amendments do not introduce any new subject matter within the meaning of 35 U.S.C. § 132. Therefore, entry of the amendments is respectfully requested.

In view of the remarks set forth below, further and favorable consideration is respectfully requested.

INTERVIEW

Applicants kindly thank Examiner Franchi as well as Examiner Padmanabhan for the interview held on October 19, 2006.

REJECTIONS UNDER 35 U.S.C. § 103(a)

The rejections under 35 U.S.C. § 103(a), as well as the applicable law, is set forth in the previous Response of September 26, 2006 and incorporated herein by reference.

Jackson et al., in view of U.S. Bombardelli et al.

The Examiner has rejected claims 67, 69, and 74-76 as being obvious over Jackson et al., in view of Bombardelli et al.

Applicants traverse this rejection.

Independent claim 67 of the present invention recites a cosmetic composition, **notably intended for reducing subcutaneous fat**, containing, as active agents: phytosphingosine or one of its cosmetically acceptable salts, and at least one lipolytic agent selected from the group consisting of CAMP and its cosmetically acceptable lipolytic derivatives, adenylate cyclase enzyme activating agents and phosphodiesterase enzyme inhibiting agents, in a cosmetically acceptable vehicle.

Jackson et al. is drawn to cosmetic compositions which enable stimulation of the synthesis of ceramides in the epidermis by the application of precursors of ceramides and/or by stimulation of the activity of enzymes responsible for catalyzing the steps in the biosynthetic pathway which yields ceramides. See, col. 13, lines 15-29. Phytosphingosine is taught by Jackson, et al. as a ceramide precursor.

Applicants respectfully submit **Jackson et al. teach applying phytosphingosine to the face to reduce wrinkles by increasing lipids in the dermis.** Additionally, Jackson et al. fail to teach or suggest a cosmetic composition for reducing subcutaneous fat. Jackson et al. fail to teach a composition containing phytosphingosine or one of its cosmetically acceptable salts, and at least one lipolytic agent.

Bombardelli, et al., the secondary reference, does not remedy the shortcomings of Jackson, et al. Bombardelli, et al. is directed to the use of esculoside, a glucosidated coumarin extracted from the fruit pericarp and from the bark of *Aesculus hippocastanum*, alone or in combination with adenylate cyclase stimulators, such as forskolin or *Salvia miltiorrhiza* diterpenes and/or with phosphodiesterase inhibitors, such as apigenine-skeleton dimeric flavones, in topical formulations for the treatment of peripheral vasculopathies related to an impaired peripheral microcirculation, cellulitis or unesthetisms. Bombardelli et al. teach a composition useful in treatment of vascular related disorders may improve early skin ageing.

Assuming *arguendo*, each and every element of the presently claimed invention were taught or suggested by Jackson et al. and Bombardelli et al. (as indicated above Applicant submits they are not), **a person of ordinary skill in the art would not have motivation to combine the cited references.**

Applicants respectfully submit Bombardelli et al. teach a reduction of fat in the dermis. In contrast, Jackson et al. teach an increase of lipids in the dermis. Accordingly, a person of ordinary skill in the art would find no motivation to combine the cited references as they **act by completely different mechanisms, to obtain opposite results.**

The Examiner asserts one of ordinary skill in the art would combine the lipolytic agents of Bombardeli et al. with the composition of Jackson et al. In support of this, the Examiner cites *In re Kerkhoven*, 626 F.2d 846, 850 (CCPA 1980). However, according to *In re Kerkhoven*, "it is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition..." when they have "...been individually taught in the prior art." Contrary to the Examiner's assertion, Bombardeli et al. teach using esculoside either alone, or in combination with, adenylate cyclase stimulators, such as forskolin or *Salvia miltiorrhiza* diterpenes and/or with phosphodiesterase inhibitors, such as apigenine-skeleton dimeric flavones, in topical formulations for the treatment of peripheral vasculopathies related to an impaired peripheral microcirculation, cellulitis or unesthetisms.

Bombardelli et al. teach esculoside is useful in the treatment of different disorders due to venous deficiencies, such as cellulitis or for fighting against deposits of superfluous fats and it could be combined with different lipolytic agents such as adenylate cyclase activating agents.

Those persons of ordinary skill in the art would not have been motivated to combine the compositions of Jackson et al. with the lipolytic agents of Bombardelli et al. because Jackson et al. teaches an increase of lipids in the dermis. The disclosure of Jackson et al. has nothing to do with the treatment of cellulitis disclosed in Bombardelli et al.

Applicants respectfully submit merely because both compositions are applied to the skin, a person of ordinary skill in the art would not be motivated to combine the references. Applicants submit **any such combination of the cited references is simply the result of an "a posteriori" appreciation of inventive subject matter disclosed with knowledge of the present application.**

In view of the foregoing, it is submitted nothing in Jackson et al. and Bombardelli et al., taken alone or together, renders the claimed invention obvious within the meaning of 35 U.S.C. § 103(a).

Applicants respectfully submit a *prima facie* case for obviousness has not been established. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

**Jackson et al., in view of Bombardelli et al., and in further
view of Streekstra et al.**

The Examiner has rejected claim 68 is under 35 U.S.C. § 103(a) as being unpatentable over Jackson et al., in view of Bombardelli et al., and in further view of Streekstra et al.

Applicants traverse this rejection.

The teachings of Jackson et al. and Bombardelli et al. are discussed above. Applicants remind the Examiner, as discussed with regard to the previous rejection **there is no motivation to combine Jackson et al. and Bombardelli et al on the contrary.**

Streekstra et al. fail to remedy the failures of the Jackson et al. and Bombardelli et al. Streekstra et al. teach sphingoid base derivatives, specifically salts thereof, and their use in compositions for topical use, and particularly, for the treatment of undesirable and/or abnormal conditions associated with dry skin, inflammation and/or microbial activity. These may include eczema, psoriasis, atopic dermatitis, acne, dandruff, mouth and/or lip infections, mycoses, various other skin infectious diseases or vaginal infections, as well as, wounds, burns, and overall normalisation of skinflora. See page 4, lines 15-21.

Streekstra et al. are completely silent with respect to the instant subject matter, i.e., cosmetic compositions intended for reducing subcutaneous fat. Additionally, there is no reason to assume the parts of the body which the compositions of the instant application care for are the same as those taught in Streekstra et al.

In view of the foregoing, it is submitted nothing Jackson et al., Bombardelli et al., and Streekstra et al, taken alone or in combination, renders the claimed invention obvious within the meaning of 35 USC § 103(a). Applicants respectfully submit a *prima facie* case for obviousness has not been established. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

Jackson et al., in view of Bombardelli et al., and in further view of Andre et al.

Claim 77 has been rejected under 35 U.S.C. § 103(a) as being as being unpatentable over Jackson et al., in view of Bombardelli et al., and in further view of Andre et al.

The teachings of Jackson et al. and Bombardelli et al. are discussed above. Again, Applicants remind the Examiner, as discussed with regard to the previous two rejections **there is no motivation to combine Jackson et al. and Bombardelli et al.**

Andre, et al. fail to remedy the deficiencies Jackson et al. and Bombardelli et al. Andre, et al. teach a cosmetic or a pharmaceutical composition, in particular a dermatological composition. The composition is characterized in that it comprises a cosmetically or pharmaceutically, and in particular

dermatologically, effective quantity of an extract of a plant of genus Tephrosia, in particular an extract of the species Tephrosia purpurea. According to the invention, it has been discovered the extract of the plant of genus Tephrosia is useful in preparing a cosmetic, pharmaceutical, and in particular dermatological composition. The compositions are primarily directed to anti-aging applications.

In contrast, the present invention is directed to compositions containing phytosphingosine have a slimming effect. Therefore, it is submitted nothing Jackson et al., Bombardelli et al., and Andre et al, taken alone or in combination, renders the claimed invention obvious within the meaning of 35 USC § 103(a).

Accordingly, claim 77 is clearly non-obvious in view of Jackson et al., Bombardelli et al., and Andre et al. Therefore, the Examiner is respectfully requested to reconsider and withdraw the rejection to claim 77.

Jackson et al., in view of Andre et al.

Claims 67, 69, 74 and 78-79 are rejected under 35 U.S.C. § 103(a) as being as being unpatentable over Jackson et al., in view of Andre et al.

Applicants respectfully traverse this rejection.

The teachings of Jackson et al. and Andre et al. are discussed above.

In addition to the reasons given above with regard to the previous discussed rejection, the present invention is not obvious considering Jackson et al. in view of Andre et al. because the person of ordinary skill in the art would have reasonably expected a combination of the anti-ageing composition of Jackson et al. with the anti-ageing composition of Andre et al. to be successful in obtaining a slimming effect. As discussed, **Jackson et al. teach applying phytosphingosine to the face to reduce wrinkles by increasing lipids in the dermis.**

As such, applicants respectfully submit a *prima facie* case for obviousness has not been established. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

Jackson et al., in view of Bombardelli et al., as evidenced by Fiaschetti et al.

Claims 31-32, 34-35, 40-42 and 84 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Jackson et al., in view of Bombardelli et al., as evidenced by Fiaschetti et al.

Independent claim 31 now recites a method of cosmetic care for obtaining a slimming effect on the human body, comprising the application on the part or parts of the body presenting subcutaneous fat of a slimming effective amount of phytosphingosine and its cosmetically acceptable salts.

The teachings of Jackson et al. and Bombardelli et al. are discussed above. Once again, Applicants remind the Examiner, as discussed with regard to the previous rejections **there is no motivation to combine Jackson et al. and Bombardelli et al.**

Fiaschetti et al. fail to remedy the deficiencies of Jackson et al. and Bombardelli et al. Fiaschetti et al. teach a cosmetic composition which beautifies and moisturizes the skin of a human being. The composition may also have therapeutic effects on the human skin such as the removal of lines or wrinkles, dissolution of fat pockets, the removal of bags under the eyes, and the closing of pores or gaps in the skin to render a smooth uniform appearance. The composition is comprised of seven basic ingredients, which include: live yeast cells, selenium, carotene, RNA, DNA, water and albumen. These core ingredients generally make up from about 80% to 100% of the composition used in the treatment, and are the basis for the advantages realized thereby.

As discussed in the Response of September 26, 2006, with regard to independent claim 67, Jackson et al. and Bombardelli et al. do not render the present invention obvious. With particular regard to independent claim 31, Jackson et al. and Bombardelli et al. fail to teach or suggest a method of cosmetic care for obtaining a slimming effect on the human body, comprising the application on the part or parts of the body presenting subcutaneous fat of a slimming effective amount of phytosphingosine and its cosmetically acceptable salts

There is no motivation whatsoever to combine Jackson et al. with Bombardelli et al. in view of claim 31. While Jackson et al. discloses a composition containing phytosphingosine, as discussed it does not teach or suggest a slimming effect as required by independent claim 31. **Jackson et al. teach applying phytosphingosine to the face to reduce wrinkles by increasing lipids in the dermis.**

The teachings of Bombardelli et al. are discussed above with regard to claim 67. Amended claim 31 does not recite esculoside, adenylate cyclase stimulators, or phosphodiesterase inhibitors. Further, Bombardelli et al. do not teach or suggest the use of phytosphingosine. Therefore, Applicants respectfully submit a person of ordinary skill in the art would not be motivated to combine Bombardelli et al. with any reference in order to obtain the presently claimed invention.

Additionally, a person of ordinary skill in the art would not realize the slimming effect of phytosphingosine or its cosmetically acceptable salts solely because other compounds which have no relation to compounds containing phytosphingosine may have a slimming effect. Clearly, there would be no expectation of success. **Such a conclusion could only be obtained by "a posteriori" appreciation of the present invention based on knowledge of it.**

As such, claims 31-32, 34-35, 40-42 and 84 are clearly nonobvious in view of Jackson et al., Bombardelli et al., and Fiaschetti et al. Accordingly, Applicants respectfully request the

Examiner to reconsider and withdraw this rejection to claims 31-32, 34-35, 40-42 and 84.

Jackson et al., in view of Bombardelli et al., as evidenced by Fiaschetti et al. and in further view of Streekstra et al.

Claim 33 is rejected under 35 U.S.C. § 103(a) as being as being unpatentable over Jackson et al., in view of Bombardelli et al., and as evidenced by Fiaschetti et al., as applied to claims 31-32, 34-35, 40-42, and 84, in view of Streekstra et al.

Applicants hereby traverse this rejection.

Jackson et al., Bombardelli et al., and Fiaschetti et al. with regard to independent claim 31 as well as independent claim 67. Clearly the combination of Jackson et al., Bombardelli et al., and Fiaschetti et al. does not render the claimed invention, and specifically independent claim 31, obvious. Therefore, as claim 33 depends from claim 31, it would follow this combination does not render dependent claim 33 obvious. A person of ordinary skill in the art would not realize the slimming effect of phytosphingosine or its cosmetically acceptable salts solely because other compounds which have no relation to compounds containing phytosphingosine or its cosmetically acceptable salts may have a slimming effect.

Regarding claim 33, Streekstra et al. fail to remedy the deficiencies of Jackson et al., Bombardelli et al., and Fiaschetti et al. More specifically, for the same reasons as given above in the discussion of the previous rejection, there would be no motivation to combine Streekstra et al. with the other cited

references to render the presently claimed invention obvious. Moreover, there would be no reasonable expectation of success to modify the references to obtain the presently claimed invention.

As claim 33 is clearly non-obvious in view of Jackson et al., Bombardelli et al., Fiaschetti et al., and Streekstra et al., Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

Jackson et al., Bombardelli et al., Fiaschetti et al.,
Streekstra et al., and Andre et al.

Claims 43-44 have been rejected under 35 U.S.C. § 103(a) as being as being unpatentable over Jackson et al., in view of Bombardelli et al., and as evidenced by Fiaschetti et al., as applied to claims 31-32, 34-35, 40-42, and 84, in view of Streekstra et al., and in further view of Andre et al.

This rejection is hereby traversed.

Applicants submit as claims 43-44 depend from claim 31, if claim 31 is not rendered obvious, than claim 43-44 are also not rendered obvious.

As such, applicants respectfully submit a *prima facie* case for obviousness has not been established. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

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With Regard to All Present Rejections under 35 U.S.C § 103(a)

Finally, it is the Applicant's position the Examiner's assertions with regard to all of the aforementioned rejections are the result of an "*a posteriori*" appreciation of inventive subject matter disclosed with knowledge of the present application.

CONCLUSION

In view of the foregoing, Applicant submits the pending claims are in condition for allowance. Early notice to this effect is earnestly solicited. The Examiner is invited to contact the undersigned attorney if it is believed such contact will expedite the prosecution of the application.

If the Examiner has any questions or comments regarding this matter, he is welcomed to contact the undersigned attorney at the below-listed number and address.

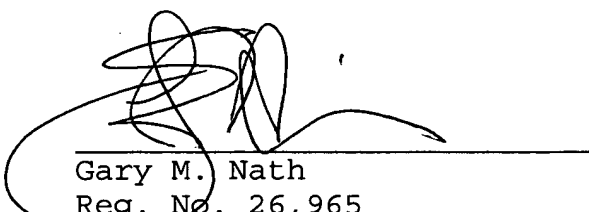
Respectfully submitted,

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